In the Supreme Court of the United States

OCTOBER TERM, 1933

No. 225

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE, petitioner,

v.

OTTO H. FALK ET AL., EXECUTORS OF THE ESTATE OF Charles F. Pfister, Deceased

---

ON A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE PETITIONER

In further support of the argument that the beneficiaries of the trust involved in this case are not entitled to deductions on account of depletion of the trust property, the petitioner desires to call attention to a statute of Michigan, which seems pertinent. The lands held by the trust in this case, including that upon which the mine in question was located, were situated in Michigan. (R. 82–87.) At all times since 1857, and continuing until the present, there has been in force in Michigan a stat-

ute containing the following provisions (Michigan Compiled Laws (1929), Sec. 12982):

> Every express trust, valid as such in its creation, except as herein otherwise provided, shall vest the whole estate in the trustees, in law and in equity, subject only to the execution of the trust; and the person for whose benefit the trust was created shall take no estate or interest in the lands, but may enforce the performance of the trust in equity.

Our argument that the depletion in this case was suffered by the trust and not by the beneficiaries is directly supported by this statute, we submit, since under its provisions the creation of the trust vested "the whole estate in the trustees, in law and in equity", and the beneficiaries of the trust took "no estate or interest in the lands." Cf. *Archer-Shee* v. *Garland*, [1931] A.C. 212, which involved the nature of the interest of a beneficiary under a similar New York statute.

Respectfully submitted.

J. CRAWFORD BIGGS,
Solicitor General.
ERWIN N. GRISWOLD,
Special Assistant to the Attorney General.

DECEMBER 1933.

U. S. GOVERNMENT PRINTING OFFICE: 1933.